

Session 1- WQS Variance Justification/ Factors to Justify Variances

Group Discussion Questions

- 1) Are there options for meeting water quality based effluent limits that would be economically feasible (not cause substantial and widespread social and economic impact) but that would have a negative environmental impact that concerns States?

Are there specific problems that States are trying to solve that cannot be addressed with Factor 6?

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2) How should we define “cannot be remedied” under
Factor 3 for variance?

- ▶ Cannot be remedied by whom? Discharger? State?
- ▶ Cannot be remedied for the time of the variance
or for the foreseeable future?

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3) What kind of guidance would be helpful to avoid misuse or over-use of this factor? Most pollution control options have *some* environmental impact, so what kind of feasibility test would allow you to determine if the option really causes “more harm” than exceeding a water quality standard?

Excerpt from *"Basis for EPA's Disapproval of Illinois Pollution Control Board's Decision Granting a Variance to CITGO Petroleum Corp. and PDV Midwest Refining, L.L.C."*
(pg. 5-6) on Factor 3

"40 CFR 131.10(g)(3) provides that designated uses can be removed "if the [s]tate can demonstrate that attaining the designated use is not feasible because ... [h]uman caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place." As a threshold matter, to justify removing a designated use under 40 CFR 131.10(g)(3), a state must identify with some specificity the "human caused conditions or sources of pollution [that] prevent the attainment of the use."

...

Specifically, a state should develop and evaluate information on the amount of loadings of the pollutant at issue from each source (including any point source that is the subject of a variance request) relative to the other sources and also relative to the total loadings to the water body.

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Excerpt from "Basis for EPA's Disapproval of Illinois
Pollution Control Board's Decision Granting a Variance to
CITGO Petroleum Corp. and PDV Midwest Refining, L.L.C."
(pg. 5-6) on Factor 3 (continued)

- » Once a state identifies with specificity the "human caused conditions or sources of pollution [that] prevent the attainment of the use," then, to justify removing a designated use under 40 CFR 131.10(g)(3), the state must also demonstrate either that the conditions or sources "cannot be remedied" or that implementation of the remedy "would cause more environmental damage to correct than to leave in place." One way that states can make such a demonstration would be to present information on the cost and technical feasibility of a reasonable range of potential remedial measures that could be implemented so that those "conditions or sources of pollution" no longer prevent the attainment of the use. The state must then demonstrate either that it is not feasible to implement such remedial measures (thereby demonstrating that the "human caused conditions or sources of pollution cannot be remedied") or that implementation of such remedial measures would "cause more environmental damage to correct than to leave in place."
- » Here, the state administrative record only includes information regarding the cost, technical feasibility and environmental impacts of remedial measures for one of the sources of pollution - the oil refinery-into the CSSC. The state has not identified -much less evaluated the costs, technical feasibility and environmental impact of -remedial measures for the other sources that the state asserts prevent attainment of the use: i.e., the sources responsible for winter de-icing activities. Nor has Illinois demonstrated in any other way that the "human caused conditions or sources of pollution" cannot be remedied or that implementation of such a remedy "would cause more environmental damage to correct than to leave in place."